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6 CITY OF OAKLAND, et al.

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8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 UGANDA KNAPPS,

12 Plaintiff,

13 vs.

14 CITY OF OAKLAND; FRANCISCO ROJAS,  
MICHAEL CARDOZA, and JAMES KELLY, individually  
15 and/or acting in their capacities as law enforcement  
officers for the City of Oakland,  
16 DOES 1-100, inclusive,

17 Defendants.

Case No. C-05-2935-MEJ

**STIPULATED PROTECTIVE  
ORDER**

18  
19 Plaintiff, UGANDA KNAPPS ("Plaintiff", individually and on behalf of the LAW  
20 OFFICES OF JAMES B. CHANIN and DEFENDANTS CITY OF OAKLAND, FRANCISCO  
21 ROJAS, MICHAEL CARDOZA, and JAMES KELLY, by and through their attorneys, the  
22 OFFICE OF THE CITY ATTORNEY OF OAKLAND, hereby stipulate to the following  
23 protective order:

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1                   1. DEFINITIONS

2                   1.1 Party: any party to this action, including all of its officers, directors,  
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4                   1.2 Disclosure or Discovery Material: all items or information, regardless of  
5 the medium or manner generated, stored, or maintained (including, among other things;

6                   1.3 "Confidential" Information or Items: information (regardless of how  
7 generated, stored or maintained) or tangible things qualify for protection under standards  
8 developed under F.R.Civ. P. 26(c). This material includes, but is not limited to:

9                         a) Copies of certain personnel files for FRANCISCO ROJAS,  
10 MICHAEL CARDOZA, and JAMES KELLY for a period covering the dates of their  
11 employment with the Oakland Police Department through and including December 31,  
12 2004.

13                        b) Copies of certain Internal Affairs files pertaining to complaints  
14 regarding performance of duty and excessive force for FRANCISCO ROJAS, MICHAEL  
15 CARDOZA, and JAMES KELLY for a period August 10, 1999 through December 31, 2004.

16                        c) Any Internal Affairs files pertaining to the incident which is  
17 alleged in the complaint on file in this action.

18                   1.4 "Highly Confidential-Attorneys' Eyes Only" Information or Items:  
19 extremely sensitive "Confidential Information or Items" whose disclosure to another Party  
20 or non-party would create a substantial risk of serious injury that could not be avoided by  
21 less restrictive means.

22                   1.5 Receiving Party: a Party that receives Disclosure or Discovery  
23 Material from a Producing Party.

24                   1.6 Producing Party: a Party or non-party that produces Disclosure or  
25 Discovery Material in this action.

26                   1.7 Designating Party: a Party or non-party that designates information or

1 items that it produces in disclosures or in responses to discovery as “Confidential” or  
 2 “Highly Confidential-Attorneys Eyes Only.”

3 1.8 Protected Material: any Disclosure or Discovery Material that is  
 4 designated as “Confidential” or as “Highly Confidential-Attorneys’ Eyes Only.”

5 1.9 Outside Counsel: attorneys who are not employees of a Party but  
 6 who are retained to represent or advise a Party in this action.

7 1.10 House Counsel: attorneys who are employees of a Party.

8 1.11 Counsel (without qualifier): Outside Counsel and House Counsel (as  
 9 well as their support staffs).

10 1.12 Expert: a person with specialized knowledge or experience in a  
 11 matter pertinent to the litigation who has been retained by a Party or its counsel to serve  
 12 as an expert witness or as an consultant n this action and who is not a past or a current  
 13 employee of a Party and who, at the time of retention, is not anticipated to become an  
 14 employee of a Party. This definition includes a professional jury or trial consultant retained  
 15 in connection with this litigation.

16 1.13 Professional Vendors: person or entities that provide litigation support  
 17 services (e.g., photocopying; videotaping; translating; preparing exhibits or  
 18 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their  
 19 employees and subcontractors.

## 20 2. SCOPE

21 The protections conferred by this Stipulation and Order cover not only  
 22 Protected Material (as defined above), but also any information copied or extracted  
 23 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus  
 24 testimony, conversations, or presentations by parties or counsel to or in court or in other  
 25 settings that might reveal Protected Material.

## 26 3. DURATION

1 Even after the termination of this litigation, the confidentiality obligations  
 2 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in  
 3 writing or court order otherwise directs.

#### 4 4. DESIGNATING PROTECTED MATERIAL

5 4.1 F.R.Civ. P. 26(c). The information sought to be protected must be  
 6 properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any  
 7 discovery material "CONFIDENTIAL" without first making a good faith determination that  
 8 protection is warranted.

9 4.2 Manner and Timing of Designations. Except as otherwise provided in  
 10 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise  
 11 stipulated or ordered, material that qualified for protection under the Order must be clearly  
 12 so designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (apart from transcripts of depositions  
 15 or other pretrial or trial proceedings), that the Producing Party affix the legend  
 16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" at the top of  
 17 each page that contains protected material.

18 A Party or non-party that makes original documents or materials available for  
 19 inspection need not designate them for protection until after the inspecting Party has  
 20 indicated which material it would like copied and produced. During the inspection and  
 21 before the designation, all of the material made available for inspection shall be deemed  
 22 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." After the inspecting Party has  
 23 identified the documents it wants copied and produced, the Producing Party must  
 24 determine which documents, or portions thereof, qualify for protection under this Order,  
 25 then, before producing the specified documents, the Producing Party must affix the  
 26 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES

ONLY”) at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL—ATTORNEYS’ ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

( c ) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

1           4.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 2 failure to designate qualified information or items as “Confidential” or “Highly Confidential—  
 3 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to  
 4 secure protection under this Order for such material. If material is appropriately designated  
 5 as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” after the material was  
 6 initially produced, the Receiving Party, on timely notification of the designation, must make  
 7 reasonable efforts to assure that the material is treated in accordance with the provisions of  
 8 the Order.

## 9           5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10           5.1 Timing of Challenges. Unless a proper challenge to a Designating  
 11 Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
 12 unnecessary economic burden, or a later significant disruption or delay of the litigation, a  
 13 Party does not waive its right to challenge a confidentiality designation by electing not to  
 14 mount a challenge promptly after the original designation is disclosed.

15           5.2 Meet and Confer. A Party that elects to initiate a challenge to a  
 16 Designating Party’s confidentiality designation must do so in good faith and must begin the  
 17 process by conferring directly (in voice to voice dialogue; other forms of communication are  
 18 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party  
 19 must explain the basis for its belief that the confidentiality designation was not proper and  
 20 must give the Designating Party an opportunity to review the designated material, to  
 21 reconsider the circumstances, and, if no change in designation is offered, to explain the  
 22 basis for the chose designation. A challenging Party may proceed to the next stage of the  
 23 challenge process only if it has engaged in this meet and confer process first.

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26           5.3 Judicial Intervention. A Party that elects to press a challenge to a

1 confidentiality designation after considering the justification offered by the Designating  
 2 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local  
 3 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the  
 4 basis for the challenge. Each such motion must be accompanied by a competent  
 5 declaration that affirms that the movant has complied with the meet and confer  
 6 requirements imposed in the preceding paragraph and that sets forth with specificity the  
 7 justification for the confidentiality designation that was given by the Designating Party in the  
 8 meet and confer dialogue.

9           The burden of persuasion in any such challenge proceeding shall be on the  
 10 Designating Party. Until the court rules on the challenge, all parties shall continue to afford  
 11 the material in question the level of protection to which it is entitled under the Producing  
 12 Party's designation.

#### 13           6. ACCESS TO AND USE OF PROTECTED MATERIAL

14           6.1 Basic Principles. A Receiving Party may use Protected Material that is  
 15 disclosed or produced by another Party or by a non-party in connection with this case only  
 16 for prosecuting, defending, or attempting to settle this litigation. Such Protected material  
 17 may be disclosed only to the categories of persons and under the conditions described in  
 18 this Order. When the litigation has terminated, a Receiving Party must comply with the  
 19 provisions of section 10, below (FINAL DISPOSITION).

20           Protected Material must be stored and maintained by a Receiving Party at a  
 21 location and in a secure manner that ensures that access is limited to the persons  
 22 authorized under this Order.

23           6.2 Disclosure of "CONFIDENTIAL: Information or Items. Unless  
 24 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving  
 25 Party may disclose any information or item designated CONFIDENTIAL only to:

26           (a) employees of the Receiving Party to whom disclosure is reasonably

1 necessary for this litigation and who have signed the "Agreement to Be Bound by  
2 Protective Order" (Exhibit A);

3 (b) experts (as defined in this Order) of the Receiving Party to whom  
4 disclosure is reasonably necessary for this litigation and who have signed the "Agreement  
5 to Be Bound by Protective Order" (Exhibit A);

6 (c) the Court and its personnel;

7 (d) court reporters, their staffs, and professional vendors to whom disclosure  
8 is reasonably necessary for this litigation and who have signed the "Agreement to Be  
9 Bound by Protective Order" (Exhibit A);

10 (e) during their deposition, witnesses in the action to whom disclosure is  
11 reasonably necessary and who have signed the "Agreement to Be Bound by Protective  
12 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that  
13 reveal Protected Material must be separately bound by the court reporter and may not be  
14 disclosed to anyone except as permitted under this Stipulated Protective Order.

15 (f) the author the document or the original source of the information.

16 6.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY"  
17 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
18 Designating Party, Receiving Party may disclose any information or item designated  
19 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" only to:

20 (a) Experts (as defined in this Order) (1) to whom disclosure is reasonably  
21 necessary for this litigation, who have signed the "Agreement to Be Bound by Protective  
22 Order" (Exhibit A);

23 (b) the Court and its personnel;

24 (c) court reporters, their staffs, and professional vendors to whom disclosure  
25 is reasonably necessary for this litigation and who have signed the "Agreement to Be  
26 Bound by Protective Order" (Exhibit A); and



(d) the author of the document or the original source of the information.

## 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designation Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

## 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing

1 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
2 copies of the Protected Material, (c) inform the person or persons to whom unauthorized  
3 disclosures were made of all of the terms of this Order, and (d) request such person or  
4 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached  
5 hereto as Exhibit A.

6           9. FILING PROTECTED MATERIAL. Without written permission from the  
7 Designating Party or a court order secured after appropriate notice to all interested  
8 persons, a Party may not in the public record in this action any Protected material. A  
9 Party that seeks to file under seal any Protected Material must comply with Civil Local  
10 Rule 79-5. In addition to placing the documents in a sealed envelope with instructions that  
11 the envelope is not to be opened absent further order of the court, the envelope should be  
12 labeled to identify title of the case, the case number, and the title of the document.

13           10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by  
14 the Producing Party, within sixty days after the final termination of this action, each  
15 Receiving Party must return all Protected Material to the Producing Party, as used in this  
16 subdivision, "all Protected Material" includes all copies, abstracts compilations, summaries  
17 or any other form of reproducing or capturing any of the Protected Material. With  
18 permission in writing from the Designating Party, the Receiving Party may destroy some or  
19 all of the Protected Material instead of returning it. Whether the Protected Material is  
20 returned or destroyed, the Receiving Party must submit a written certification to the  
21 Producing Party (and, if not the same person or entity, to the Designating Party) by the  
22 sixty day deadline that identifies (by category, where appropriate) all the Protected  
23 Material that was returned or destroyed and that affirms that the Receiving Party has not  
24 retained any copies, abstracts, compilations, summaries or other forms of reproducing or  
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
26 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal

1 memoranda, correspondence or attorney work product, even if such materials contain  
 2 Protected Material. Any such archival copies that contain or constitute Protected Material  
 3 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

4 **11. MISCELLANEOUS**

5 **Right to Further Relief.** Nothing in this Order abridges the right of any  
 6 person to seek its modification by the Court in the future.

7 **12. JURISDICTION.** The Court shall retain jurisdiction over any matter  
 8 covered by this Stipulation and Order for 24 months after the final termination of this  
 9 action.

10 **IT IS SO STIPULATED.**

11 DATED: February 8, 2006

LAW OFFICES OF JAMES B. CHANIN

12 By: //s//JAMES B. CHANIN

13 JAMES B. CHANIN

14 Attorneys for Plaintiff  
 15 Uganda Knapps

16  
 17 DATED: February 8, 2006

OFFICE OF THE CITY ATTORNEY

18  
 19 By: //s//ARLENE M. ROSEN

20 ARLENE M. ROSEN

21 Attorneys for Defendants  
 22 City of Oakland, Francisco Rojas  
 23 Michael Cardoza and James Kelly

24  
 25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**  
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Pursuant to Stipulation, IT IS SO ORDERED.

1 DATED: February 17, 2006  
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4 MARIA-ELEN  
United States



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
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[print or type full address], declare under penalty  
of perjury that I have read in its entirety and understand the Stipulated Protective Order  
that was issued by the United States Court for the Northern District of California on  
\_\_\_\_\_  
[date] in the case of Uganda Knapps v. City of Oakland, et al.  
Case No. C-05-2935-MEJ. I agree to comply with and be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the  
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this  
action.

I hereby appoint \_\_\_\_\_ [print or type full  
name] of \_\_\_\_\_ [print or type full address  
and telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Stipulated Protective Order.

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Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
[printed name]  
Signature: \_\_\_\_\_  
[signature]